

1

2 E-filed: 7/15/2008

3

4
IN THE UNITED STATES DISTRICT COURT
5
FOR THE NORTHERN DISTRICT OF CALIFORNIA
6
SAN JOSE DIVISION

7

8 RAMBUS INC.,

No. C-05-00334 RMW

9 Plaintiff,

10 v.
11 ORDER DENYING RAMBUS'S MOTION
12 FOR SUMMARY JUDGMENT ON
13 SAMSUNG'S COUNTERCLAIMS I, II AND
14 III.

15

16 HYNIX SEMICONDUCTOR INC., HYNIX
17 SEMICONDUCTOR AMERICA INC.,
18 HYNIX SEMICONDUCTOR
19 MANUFACTURING AMERICA INC.,

[Re Docket Nos. 1772, 1840, 1872]

20

21 SAMSUNG ELECTRONICS CO., LTD.,
22 SAMSUNG ELECTRONICS AMERICA,
23 INC., SAMSUNG SEMICONDUCTOR, INC.,
24 SAMSUNG AUSTIN SEMICONDUCTOR,
25 L.P.,

[PUBLIC REDACTED VERSION]

26

27 NANYA TECHNOLOGY CORPORATION,
28 NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

19

20 RAMBUS INC.,

No. C-05-02298 RMW

21 Plaintiff,

[Re Docket Nos. 836, 886, 904]

22

v.
23 SAMSUNG ELECTRONICS CO., LTD.,
24 SAMSUNG ELECTRONICS AMERICA,
25 INC., SAMSUNG SEMICONDUCTOR, INC.,
L.P.,

[PUBLIC REDACTED VERSION]

26

Defendants.

27

28

ORDER DENYING RAMBUS'S MOTION FOR SUMMARY JUDGMENT ON SAMSUNG'S COUNTERCLAIMS I, II AND III
C-05-00334 RMW; C-05-02298 RMW
NED (TSF)

1 Plaintiff Rambus Inc. ("Rambus") moves for summary judgment on Counts I, II and III
2 asserted in Samsung's most recent pleading ("Samsung's Answer and Counterclaims") filed by
3 defendants Samsung Electronics Co., Ltd., Samsung America Electronics, Inc., Samsung
4 Semiconductor, Inc., and Samsung Austin Semiconductor, L.P. ("Samsung"). Samsung opposes the
5 motion. The court has reviewed the papers and considered the arguments of counsel. For the
6 reasons discussed below, the court DENIES Rambus's motion for summary judgment.

7 **I. BACKGROUND**

8 **A. The License Agreement**

9 Beginning in early 2000, Rambus asserted various patents against Samsung's competitors in
10 the semiconductor memory business, namely Hynix, Micron and Infineon. In those lawsuits,
11 Rambus accused Hynix, Micron and Infineon of infringing its patents by making and selling
12 SDRAM and DDR SDRAM. At the time, Rambus claimed that any DRAM manufacturer who
13 chose to litigate would be forced to pay higher royalties than those who chose to license. *See, e.g.*,
14 Bremer Decl., Ex. 2 (Rambus developer presentation). Samsung chose to license. In October 2000,
15 Rambus and Samsung signed an agreement giving Samsung the right to manufacture various types
16 of memory devices (including SDRAM and DDR SDRAM) for five years. *See* Gross Decl., Ex. A
17 ("Agreement").

18 Section 3 of the Agreement detailed Samsung's monetary obligations to Rambus in exchange
19 for the license. *Id.* at 15-17. Section 3.1 required Samsung to pay Rambus [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Section 3.8 contained a "most favored licensee" or "MFL" provision requiring Rambus to
23 notify Samsung if other licensees obtained more favorable royalty rates than Samsung and further
24 requiring Rambus to extend those rates to Samsung. *Id.* at 16-17. Because this dispute turns on
25 interpreting this provision, the court sets it out in its entirety:
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 *Id.* (emphasis added). The parties memorialized Samsung's favored status in the recital clauses at
4 the beginning of the Agreement:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 *Id.* at 1.

10 Section 8 governed the term and termination of the Agreement. *Id.* at 22-23. Section 8.5
11 required the parties to meet six months prior to the expiration of the Agreement and to negotiate in
12 good faith to reach either a new licensing agreement or an extension of the Agreement. *Id.* at 23.
13 Specifically, [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Rambus's litigation campaign suffered a serious setback in the first part of 2001 when
18 Rambus received an adverse jury verdict in its litigation against Infineon. In July 2001, the parties
19 amended their Agreement. *See* Gross Decl., Ex. B ("Amendment"). The Amendment required
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED] The Amendment retained a MFL clause similar to Section 3.8 of the
24 Agreement, but the new MFL clause added:
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 *Id.* at 2-3. Finally, the Amendment provided that [REDACTED]
2 [REDACTED]

3 **B. The Infineon Settlement**

4 After a successful appeal of the *Infineon* judgment, *see Rambus Inc. v. Infineon Technologies*
5 *AG*, 318 F.3d 1081 (Fed. Cir. 2003), Rambus's litigation against Infineon took a disastrous turn
6 when the district court held on remand that Rambus had spoliated evidence and ruled from the bench
7 that it would dismiss Rambus's infringement claims. *See Samsung Electronics Co., Ltd. v. Rambus,*
8 *Inc.*, 440 F. Supp. 2d 512, 515 (E.D. Va. 2006), *vacated by* 523 F.3d 1374 (Fed. Cir. 2008). Before
9 the district court could issue its findings of fact and conclusions of law, Rambus and Infineon
10 settled. *Id.* Rambus's settlement required Infineon to pay a quarterly lump sum of \$5,800,000 up to
11 certain limits. *See* Gross Decl., Ex. C at 11-14. In exchange, Infineon received a license to all of
12 Rambus's existing patents allowing Infineon to make a variety of memory products. *Id.* at 5-7.

13 Because Rambus licensed Infineon, Rambus terminated the Amendment to the Agreement on
14 March 22, 2005. Bremer Decl., Ex. 24 (Rambus's termination letter to Samsung). It is unclear
15 whether Rambus revealed the terms of the Infineon license to Samsung, but it is clear that Rambus
16 failed to give Samsung the Infineon deal. *See id.*, Ex. 3 ¶ 11 (declaration of Jay Shim). The
17 negotiations to extend the license broke down, and Rambus proposed a "standstill agreement" to
18 give the parties a year to assess their relationship. *See, e.g., id.*, Ex. 35 (Rambus proposal). The
19 parties could not agree, and on June 7, 2005, Rambus informed Samsung that it had filed these two
20 cases against Samsung. *See id.*, Ex. 38 (letter from Rambus CEO Harold Hughes to Dr. Hwang at
21 Samsung).

22 **C. Samsung's Counterclaims I, II and III**

23 In Samsung's governing pleading, it asserted seven counterclaims, the first three of which are
24 at issue here. Count I alleges that Rambus breached the Agreement when Rambus did not give
25 Samsung the lower royalty payments of the Infineon settlement pursuant to Section 3.8. Samsung's
26 Answer and Countercl. 45. Count II alleges that Rambus breached the Agreement by failing to
27 notify Samsung of Infineon's lower royalty payments and failing to negotiate a new license

1 agreement in good faith as Section 8.5 of the Agreement required. *Id.* at 46-47. Count III alleges a
2 breach of the duty of good faith and fair dealing when Rambus refused to give Samsung lower
3 royalty rates after the Infineon settlement. *Id.* at 47.

4 **II. ANALYSIS**

5 **A. Legal Standard**

6 Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and
7 admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
8 material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.
9 56(c). The moving party bears the burden of establishing that there is no issue of material fact.
10 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Only disputes over facts that might affect the
11 outcome of the suit under the governing law will properly preclude the entry of summary judgment."
12 *Anderson v. Liberty Lobby, Inc.*, 472 U.S. 242, 248 (1986). For a dispute to be genuine, there must
13 be sufficient evidence "such that a reasonable jury could return a verdict for the nonmoving party."
14 *Id.* Lastly, the court views all evidence in a light most favorable to the nonmoving party. *Masson v.*
15 *New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

16 **B. California Contract Law**

17 California law governs the interpretation of the Agreement. See Agreement at 23. "The
18 fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties."
19 *Powerine Oil Co., Inc. v. Superior Court*, 37 Cal. 4th 377, 390 (2005). Generally, the parties'
20 mutual intent is determined by objective manifestations such as the words used in the agreement,
21 extrinsic evidence detailing the surrounding circumstances in which the parties negotiated the
22 contract and the subsequent conduct of the parties. *People v. Shelton*, 37 Cal. 4th 759, 767 (2006).
23 If possible, a court should determine the mutual intent of the parties from the contract alone.
24 *Powerine Oil Co.*, 37 Cal. 4th at 377. But California law requires a more "realistic approach" to
25 contract interpretation and courts must seek to enforce the actual understanding of the parties to a
26 contract. *Scott v. Pac. Gas & Elec.*, 11 Cal. 4th 454, 463 (1995). The court therefore must consider
27 extrinsic evidence that is "relevant to prove a meaning to which the language of the instrument is

28
ORDER DENYING RAMBUS'S MOTION FOR SUMMARY JUDGMENT ON SAMSUNG'S COUNTERCLAIMS I, II AND III
C-05-00334 RMW; C-05-02298 RMW
NED (TSF)

1 reasonably susceptible." *Pac. Gas & Elec. v. Thomas Drayage & Rigging Co., Inc.*, 69 Cal. 2d 33,
 2 37 (1968). If a term has two or more reasonable constructions, it is ambiguous. *Waller v. Truck Ins.*
 3 *Exchange, Inc.*, 11 Cal.4th 1, 18 (1995). Resolving such ambiguity is a factual inquiry and summary
 4 judgment is not appropriate. *S. Cal. Edison Co. v. Superior Court*, 37 Cal. App. 4th 839, 852
 5 (1995).

6 A court should apply the ordinary understanding of a word in a contract unless it is clear that
 7 the parties used the word in a special or technical sense. *Am. Alternative Ins. Corp. v. Superior*
 8 *Court*, 37 Cal. App. 4th 1239, 1245 (2006). Oftentimes, a court will refer to dictionaries to discover
 9 the ordinary and popular meaning of a word. *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.*,
 10 116 Cal. App. 4th 1253, 1263 (Cal. Ct. App. 2004). In contrast, "[t]echnical words are to be
 11 interpreted as usually understood by persons in the profession or business to which they relate."
 12 *Denver D. Darling, Inc. v. Controlled Env'ts Const., Inc.*, 89 Cal. App. 4th 1221, 1236 (Cal. Ct.
 13 App. 2001). Lastly, courts must interpret contracts as a whole to give force and effect to every
 14 provision, each helping to interpret another. Cal. Civ. Code. § 1641.

15 **C. Count I: Breach of Section 3.8 of the Agreement**

16 Rambus's motion for summary judgment on Count I turns solely on the interpretation of the
 17 words "royalty rate" in the "most favored licensee" or "MFL" clause of Section 3.8 of the
 18 Agreement. Before proceeding, it is noteworthy that "MFL clauses are inherently difficult to
 19 negotiate and, often, to apply." 3 ROGER M. MILGRIM, MILGRIM ON LICENSING 26-4 (Matthew
 20 Bender ed., 2008) (1990). Licensees frequently worry that a faithless licensor will grant others more
 21 favorable terms, yet conceal that information from the "most favored" licensee, therefore making it
 22 difficult to enforce the MFL clause. *Id.* Such "other favorable terms" could include lower running
 23 royalty rates, lower periodic licensing fees, forbearance from an infringement action, a release of
 24 other claims, transfers of technological information, or simple royalty-free licenses. *Id.* at 26-5 to
 25 26-6 & nn. 2.1, 2.2 & 3. Because of the complexity of licensing arrangements, discerning the
 26 intended scope of any given MFL provision can be very difficult and has been the subject of
 27 frequent disputes. *Id.* at 26-5.

28

ORDER DENYING RAMBUS'S MOTION FOR SUMMARY JUDGMENT ON SAMSUNG'S COUNTERCLAIMS I, II AND III
 C-05-00334 RMW; C-05-02298 RMW

NED (TSF)

1 **1. The Plain Language of Section 3.8**

2 Given this context, it is not surprising that the MFL in Section 3.8 is difficult to interpret.
3 The MFL clause required Rambus to notify Samsung of any lower "royalty rate" and automatically
4 extend that "royalty rate" to Samsung. Rambus argues that the ordinary understanding of "royalty
5 rate" is a running royalty per unit, and that because Infineon licensed Rambus's patents for a
6 quarterly lump sum divorced from any quantity, Infineon did not receive a lower "royalty rate"
7 under Section 3.8. Samsung disagrees, and argues that a lump sum payment can be easily converted
8 into an effective royalty rate, which, if lower, required Rambus to notify Samsung about it and grant
9 it to Samsung. Samsung also points out that Infineon pays a "rate," though the rate is an amount per
10 unit of time, as opposed to per unit of sales.

11 Both parties' dictionary definitions suggest that the word "rate" is a ratio that compares two
12 different kind of units. Mot. at 7 (citing several dictionaries defining rate as "a charge of payment
13 calculated in relation to a particular sum or quantity" and "an amount of payment or charge based on
14 another amount"); Opp. at 17 (citing dictionaries that define rate as "a proportional or relative value"
15 and "a quantity measured with respect to another measured quantity"). This dictionary evidence
16 suggests that the ordinary usage of the word "rate" could encompass both a percentage of net sales
17 or a dollar amount per quarter.

18 Rambus argues that while quarterly lump sum payments may qualify as a royalty rate, the
19 parties intended royalty rate to mean a percentage of net sales as structured in Section 3.1(b). The
20 pertinent language in the contract of Section 3.8 states that:

21 [REDACTED]

22 25 Agreement at 16 (emphasis added). As discussed, Section 3.1(b) defines Samsung's royalty
23 obligations as a percentage based on net sales of four types of products. *Id.* at 15. Rambus urges
24 27 that Section 3.8 refers exclusively to a royalty payment structure as outlined in 3.1(b) and therefore
28 28

1 Rambus had no obligation to lower Samsung's rates when Rambus settled with Infineon.

2 But looking at the plain language of the contract, this is not the only reasonable interpretation
3 of Sections 3.8's reference to Section 3.1(b). One can reasonably interpret the MFL to state that if a
4 third party's royalty rates are lower than Samsung's royalty rates, then Samsung must be notified and
5 given those lower rates. The cross-reference to 3.1(b) serves as a source to determine *Samsung's*
6 *rates*, but not to impose a required structure on the third party's rates.

7 Used in its ordinary sense, "royalty rate" can refer to a ratio of dollars per unit time or to a
8 percentage of net sales. Since the Agreement does not clearly limit "royalty rate" to one or the
9 other, the contract is reasonably susceptible to both Samsung or Rambus's interpretations of the term
10 and the court cannot grant summary judgment. *S. Cal. Edison Co.*, 37 Cal. App. 4th at 847-48.

11 **2. The Jurisprudence Regarding Most Favored Licensee Clauses**

12 Decades of case law demonstrate that MFL clauses engender frequent disputes and confirm
13 the ambiguity of the clause at issue here. 3 MILGRIM, 26-5 n.3. For example, the radio industry, like
14 the DRAM industry, saw its share of patent disputes, and the Hazeltine Corporation may well have
15 been the Rambus of radio.¹ *See Hazeltine Co. v. Zenith Radio Co.*, 100 F.2d 10, 11-12 (7th Cir.
16 1938) ("Hazeltine Corporation, is engaged in research for the development of radio apparatus and
17 conducts a laboratory and owns numerous patents; and its business operation is the granting of
18 licenses under such patents to manufacturers and sellers of radio apparatus."). Hazeltine granted a
19 license with a MFL clause providing that "the [licensee's] rate of royalty . . . shall be as low as the
20 lowest rate of royalty specified in any other license . . ." *Id.* at 12. Hazeltine also began granting
21 licenses that gave the licensees the option to elect between a running royalty (similar to Zenith's
22 license) or an annual lump sum. *Id.* Zenith complained that a company doing a large volume of
23

24 ¹ Like Rambus, Hazeltine was no stranger to industry-wide litigation. *See also Detrola*
25 *Radio & Television Corp. v. Hazeltine Corp.*, 313 U.S. 259 (1941) (finding combination claims
26 obvious); *Hazeltine Corp. v. Emerson Television-Radio*, 129 F.2d 580 (2d Cir. 1942) (narrowly
27 construing claims); *Hazeltine Corp. v. Crosley Corp.*, 130 F.2d 344 (6th Cir. 1942) (affirming
noninfringement); *Hazeltine Corp. v. Kirkpatrick*, 165 F.2d 683 (3d Cir. 1948) (denying petition for writ
of mandamus to order declaratory judgment action dismissed).

1 business that paid an annual lump sum could effectively obtain a lower royalty rate than Zenith. *Id.*
2 at 12-13.

3 After examining the contract, the court explained that the MFL "does not purport to define
4 'rate of royalty' nor to restrict Hazeltine to the adoption of any particular type or kind of 'rate of
5 royalty.'" *Id.* at 16. Further, the court stated that the common definition of rate (an amount per unit)
6 does not define or designate the unit, and that patent licensing agreements have linked such rates to
7 devices manufactured, periods of use or fixed payments per unit of time. *Id.* The court admitted
8 that it could not "escape the conclusion that a provision in a patent-license contract which provides
9 for the payment of fixed sum of money per fixed period of time for the use of a patented invention
10 states a rate of royalty within the generally understood and recognized meaning of that phrase." *Id.*²

11 In another analogous case, the MFL clause stated that if a third party obtains a license "at a
12 more favorable royalty rate than the rate specified in Article II . . .," then the licensee would have the
13 option to modify the agreement to get the more favorable royalty rate. *Cardinal of Adrian, Inc. v.*
14 *Amerock Co.*, 208 U.S.P.Q. 822, 822-23 (E.D. Mich. 1979). The licensor (Cardinal) later settled
15 litigation with Norris Industries by granting Norris a fully paid up license for a lump sum. *Id.* at
16 823. The licensee (Amerock) claimed that the failure to notify it of the settlement and offer it the
17 lower rate constituted a breach of the MFL clause. *Id.* Cardinal claimed that the lump sum was
18 calculated by applying past use projected into the future for the remaining life of the patent. *Id.* The
19 court nonetheless held that Amerock has a right under the MFL clause to have the lump sum
20 payment offered to Norris Industries. *Id.* The court noted that Norris "used" the patent less than
21 Amerock, but that this was irrelevant because Norris had the right to use the patent as much as it
22 wished. *Id.* The court concluded that "[t]he most favored nation clause is intended to guarantee to
23 Amerock that no licensee will be given the *opportunity* to use this patent at a more favorable rate."

24
25 ² Although the court determined that periodic lump sum payments were royalty rates, the
26 court ruled in favor of Hazeltine. Zenith sought to continue to pay a percentage royalty (instead of an
27 annual lump sum), but with reduced royalty rates equal to the lump sum divided by the largest lump sum
28 licensees sales volume. *Id.* at 18. The court could not brook this because it ignored the value to
Hazeltine of an upfront lump-sum, as opposed to auditing sales periodically and applying a running
royalty rate. *Id.* at 17-18.

1 *Id.* (emphasis in original).

2 Rambus insists that the reference to Section 3.1(b) in the MFL clause is direct evidence that
 3 the parties intended the MFL only to apply when a third party obtained royalty rates with a similar
 4 payment structure. But the *Cardinal* MFL clause similarly referred to the section laying out the
 5 licensee's payment structure. Nonetheless, the *Cardinal* court declined to follow this interpretation
 6 and held that the MFL clause protected the running royalty rate licensee from the licensor entering
 7 into more favorable lump sum royalty arrangements. *Id.*

8 The Federal Circuit has reached a similar result in its limited case law on this matter. *See*
 9 *Studiengesellschaft Kohle, M.B.H. v. Hercules, Inc.*, 105 F.3d 629 (Fed. Cir. 1997). *Hercules*
 10 concerned a MFL clause that gave Hercules "the benefit of any lower royalty rate or rates" given to
 11 third parties. *Id.* at 631. Hercules paid a one-time lump sum in addition to a percentage of sales for
 12 its royalty rate. *Id.* When the licensor granted a third party a "paid up" license for a lump sum
 13 alone, Hercules demanded this more favorable deal. *Id.* at 632. The Federal Circuit concluded that
 14 the "contract expressly and unambiguously provides Hercules with the right to obtain the terms of
 15 another license" as soon as the more favorable rates become effective for the third party. *Id.* at 634.
 16 In so holding, the court noted that "we see no distinction between one who makes an up-front,
 17 lump-sum payment and one who makes continuing royalty payments. Indeed, such a distinction
 18 would be doubly doubtful because a 'paid-up' license presumably includes potential future royalty
 19 payments discounted to their net present value." *Id.* at 633.³

20 A fourth case illustrates how parties can use broader language to ensure protection for the
 21 most favored licensee. *Epic Systems Corp. v. Allcare Health Management System, Inc.*, 2002 WL
 22 31051023 (N.D. Tex. 2002). There, the MFL stated that the licensee, who was paying a percentage
 23 of sales royalty rate, would get the most favorable "financial terms" or "equivalent terms" of any
 24 other license. *Id.* at *3. The licensor claimed that a lump sum license did not trigger the MFL
 25

26 ³ *Hercules* turned on the interpretation of the term "paying licensee." A distinction
 27 between a lump sum and running royalty rate licensee was unsuccessfully advocated by the licensor who
 28 argued that the MFL applied only to "paying licensee" and that one who paid up-front was not a
 "paying" licensee.

1 clause. *Id.* at 5. The court disagreed. *Id.* It noted that a lump-sum fell within "equivalent terms"
 2 and that "had the parties intended to exclude lump-sum payments from the comparison, they could
 3 have done so." *Id.* at *4. The court also explained that the purpose of the MFL clause was to
 4 "guarantee that no other licensee will be given the opportunity to use the patent at a more favorable
 5 rate," and that the licensor's interpretation of the MFL clause would render it meaningless. *Id.* at *5.

6 The fact that the "most favored licensee" prevailed in all but one of these cases cannot escape
 7 notice. This is particularly salient given the actual language of the MFL clauses in each case. Every
 8 court that construed the term "royalty rate" or "rate of royalty" understood it to include lump sum
 9 payments of various types. In light of this understanding developed within the field of patent
 10 licensing that supports Samsung's position, the court cannot agree with Rambus that the contract is
 11 only reasonably susceptible to its interpretation.

12 **3. The Parties Could Have Expressed Their Intent Unambiguously**

13 As the *Epic Systems* court noted, had the parties wished to draft a clearer agreement, they
 14 could have done so. On one hand, Rambus could have defined "royalty rate" explicitly, for example,
 15 by using the phrase "running royalty rate" or perhaps "royalty rate based on percentage of Net Sales
 16 agreed to be paid or ordered to be paid by a Third Party (not to include lump sum licenses to a Third
 17 Party)." This would have clearly articulated the parties' intent that the MFL clause applied only
 18 when Rambus entered into a license agreement for a lower percentage of net sales than Samsung's
 19 rate as outlined in Section 3.1(b). On the other hand, the parties could have used language that
 20 would entitle Samsung to summary judgment. For example, the license could have used broad
 21 language similar to that in *Epic Systems* such as, "royalty, payment or other financial terms." The
 22 parties could have further clarified the MFL clause by including a methodology for converting lump
 23 sum arrangements into percentage of net sales royalty rates and vice versa.

24 In its reply brief, Rambus presents extrinsic evidence that it argues shows that the parties did
 25 not intend lump sum licenses to be covered under Section 3.8. Rambus's reply cites to a Samsung
 26 email proposing revisions to the MFL clause to cover a lump sum license. Gross Decl. in Supp.
 27 Rambus's Reply, Ex. B. Rambus argues that since the parties did *not* adopt this proposed version of
 28

1 the MFL clause, the phrase "royalty rate" cannot include a lump sum payment.

2 This extrinsic evidence is not as persuasive as Rambus suggests. First, it refers to a "lump
3 sum," and not a periodic lump sum payment. Second, Rambus's response to Samsung's proposal was
4 to simply ignore it. *See id.*, Exs. D & E (response from Rambus and redline license agreement).

5 Rambus did not comment on Samsung's more detailed proposal for the MFL clause and retained the
6 "royalty rate" formulation. *Id.*, Ex. E at 18. Rambus also [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED] If Rambus intended to exclude lump sum licenses from the MFL clause, it could
10 have clearly stated this during negotiations for the Agreement instead of sidestepping the issue.

11 **D. Counts II and III**

12 Rambus asserts that it should receive summary judgment on counts II and III if the court
13 grants summary judgment on count I. The court has declined to grant Rambus's motion with respect
14 to count I. Because Rambus presents no other arguments to support granting its motion with respect
15 to counts II and III, the court denies Rambus's motion in this regard.

16 **III. ORDER**

17 For the foregoing reasons, the court DENIES plaintiff's motion for summary judgment on
18 defendant's counterclaims I, II and III. An unredacted copy of this order will be publicly filed within
19 seven (7) days of the date of this order, absent a meritorious request by a party that certain portions
20 of the order be redacted from the publicly filed copy.

21
22 DATED: 7/9/2008



23 RONALD M. WHYTE
24 United States District Judge
25
26
27
28

United States District Court

For the Northern District of California

1 Notice of this document has been e-mailed to: counsel for Rambus and Samsung.

Counsel for Rambus Inc., all actions		Counsel for Hynix entities, C-00-20905 and C-05-00334	
Burton Alexander Gross	Burton.Gross@mto.com	Allen Ruby	ruby@allenrubylaw.com
Carolyn Hoecker Luedtke	carolyn.luedtke@mto.com	Belinda Martinez Vega	bvega@omm.com
Catherine Rajwani	crajwani@sidley.com	Daniel J. Furniss	djfurniss@townsend.com
Craig N. Tolliver	ctolliver@mckoolsmith.com	Geoffrey Hurndall Yost	gyost@thelenreid.com
David C. Yang	david.yang@mto.com	Jordan Trent Jones	jttjones@townsend.com
Douglas A. Cawley	dcawley@mckoolsmith.com	Joseph A. Greco	jagreco@townsend.com
Erin C. Dougherty	erin.dougherty@mto.com	Kenneth Lee Nissly	kennissly@thelenreid.com
Gregory P. Stone	gregory.stone@mto.com	Kenneth Ryan O'Rourke	korourke@omm.com
Jennifer Lynn Polse	jen.polse@mto.com	Patrick Lynch	plynch@omm.com
Keith Rhoderic Dhu Hamilton, II	keith.hamilton@mto.com	Susan Gregory VanKeulen	svankeulen@thelenreid.com
Kelly Max Klaus	kelly.klaus@mto.com	Theodore G. Brown, III	tgbrown@townsend.com
Miriam Kim	Miriam.Kim@mto.com	Tomomi Katherine Harkey	tharkey@thelen.com
Peter A. Detre	detrepa@mto.com	Counsel for Micron entities, C-06-00244	
Pierre J. Hubert	phubert@mckoolsmith.com	Aaron Bennett Craig	aaroncraig@quinnmanuel.com
Rosemarie Theresa Ring	rose.ring@mto.com	David J. Ruderman	davidruderman@quinnmanuel.com
Scott L Cole	scole@mckoolsmith.com	Harold Avrum Barza	halbarza@quinnmanuel.com
Scott W. Hejny	shejny@sidley.com	Jared Bobrow	jared.bobrow@weil.com
Sean Eskovitz	sean.eskovitz@mto.com	John D Beynon	john.beynon@weil.com
Steven McCall Perry	steven.perry@mto.com	Leeron Kalay	leeron.kalay@weil.com
Thomas N Tarnay	ttarnay@sidley.com	Linda Jane Brewer	lindabrewer@quinnmanuel.com
William Hans Baumgartner, Jr	wbaumgartner@sidley.com	Rachael Lynn Ballard McCracken	rachaelmccracken@quinnmanuel.com
		Robert Jason Becher	robertbecher@quinnmanuel.com
		Yonaton M Rosenzweig	yonirosenzweig@quinnmanuel.com

28
 ORDER DENYING RAMBUS'S MOTION FOR SUMMARY JUDGMENT ON SAMSUNG'S COUNTERCLAIMS I, II AND III
 C-05-00334 RMW; C-05-02298 RMW
 NED (TSF)

United States District Court

For the Northern District of California

Counsel for Nanya entities, C-05-00334		Counsel for Samsung entities, C-05-00334 and C-05-02298	
Chester Wren-Ming Day	cday@orrick.com	Ana Elena Kadala	anita.kadala@weil.com
Craig R. Kaufman	ckaufman@orrick.com	Claire Elise Goldstein	claire.goldstein@weil.com
Glenn Michael Levy	glevy@orrick.com	David J. Healey	david.healey@weil.com
Jan Ellen Ellard	jellard@orrick.com	Edward Robert Reines	Edward.Reines@weil.com
Jason Sheffield Angell	jangell@orrick.com	Matthew D. Powers	matthew.powers@weil.com
Kaiwen Tseng	ktseng@orrick.com		
Mark Shean	mshean@orrick.com		
Robert E. Freitas	rfreitas@orrick.com		
Vickie L. Feeman	vfeeman@orrick.com		

Counsel for intervenor, Texas Instruments, Inc., C-05-00334	
Kelli A. Crouch	kcrouch@jonesday.com
Counsel for intervenor, United States Department of Justice, C-00-20905	
Eugene S. Litvinoff	eugene.litvinoff@usdoj.gov
May Lee Heye	may.heye@usdoj.gov
Nathanael M. Cousins	nat.cousins@usdoj.gov
Niall Edmund Lynch	Niall.Lynch@USDOJ.GOV
Counsel for intervenor, Elpida Memory, Inc., C-00-20905 and C-05-00334	
Eric R. Lamison	elamison@kirkland.com
John J. Feldhaus	jfeldhaus@foley.com

Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program in each action.

Dated: 7/15/2008

TSF
Chambers of Judge Whyte